IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1296 OF 2004

Pearl Paper Products Ltd. ..Appellants

Versus

Maharashtra State Board and
Secondary & Higher Secondary
Education, Pune. ..Respondent

Mr.P.N.Karlekar for appellants
Ms.Pratibha Mehta i/b M/s.Little & Co. for respondent

CORAM : P.V.KAKADE, J.
DATE : 12TH JULY, 2005.

P.C.:

1. This an appeal preferred by the appellants against the judgment and order dated 1.3.2004 passed by Additional District Judge, Pune dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Pune dated 12.6.2003 decreeing

the plaintiff's suit for damages to the tune of Rs.62,725/=.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff came with the case that the suit for recovery of the damages on the ground that the defendant had committed breach of agreement between the parties, which was binding on the defendant and failed to supply the goods as per the impugned order dated 16.12.1994 and hence the defendant had committed the breach of obligation at the foot of the agreement and the defendant was held liable to pay the said amount.

. The learned trial judge after hearing boh the parties and adjudicating the dispute came to the conclusion that the defendant had committed the breach of the agreement between the parties and therefore, due to such the defendant was liable to pay the amount of damages and passed decree accordingly. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial court

were legal and proper and therefore, dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the trial court had not framed issue regarding limitation, though it was raised and adjudicated by the lower appellate court holding that the suit was within the limitation. The only question of law sought to be raised in the appeal is with regard to the issue of limitation.

. It was urged on behalf of the appellant that the suit was filed on 11.3.1998 whereas the breach of obligation even as per the plaintiff-respondent had occurred on 16.1.1995 and therefore, by virtue of Article 55 of the Limitation Act the suit was not within limitation as it was filed after the period of three years. However, in this regard it must be noted that it is an admitted as well as evident position that an agreement between the parties was executed with regard to the suit transaction, it was dated 13.3.1995. The learned counsel for the appellant made available copy of

the plaint as well as agreement and the copy of the plaint clearly shows that the suit is based on the agreement dated 13.3.1995 and not earlier order and letter placed on record by the plaintiff, which showed that work order was issued to the defendant on 16.12.1994 by which the plaintiff requested the defendant to supply the stationery on or before 16.1.1995. The learned appellate court has observed, quite rightly, that though the tender form and consequent work order were issued earlier, as per the Tender Form Clause-7 written agreement was executed between the parties on 13.3.1995, which shall be the basis of the suit and, therefore, the suit which is filed within three years from the execution of the agreement, would be within limitation. I fully agree with the view expressed by the lower appellate court judge and hold that the suit is within limitation. There is no other substantial question of law raised. The learned counsel for the appellant sought to raise the question of refund of security amount which was deposited at the foot of the agreement vide Clause 6 thereof. However, it must be noted that the Clause 6 of the agreement makes it clear that the said security deposit was refundable only after the contract was

completed satisfactorily on demand by the supplier. In the present case before us, both the courts below have held that the contract is not satisfied and in fact the suit is filed for breach of contract between the parties, and therefore, there would not be any question of entitlement of the appellant for refund of the security at all. In view of this aspect the appeal has no merits and stands dismissed with no order as to costs.